Petition

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81-725

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RAYMOND C. JOHNSON
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

KENNETH MICHAEL WRIGHT
203 West Clarence Street
Lake Charles, Louisiana 70601
Tel. (318) 439-6930
Attorney for Petitioner

QUESTION PRESENTED

Does a certificate from the Federal Deposit Insurance Corporation prior to an alleged knowingly making of a materially false statement to a federally insured bank in violation of 18 U.S.C. 1014, standing alone constitute evidence sufficient to prove beyond a reasonable doubt jurisdictionally necessary insured status when the sufficiency of evidence is raised by a motion for a judgment of acquittal.

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OPINIONS BELOW

There is no formal opinion from the United States District Court for the Western District of Louisiana, Lake Charles Division as the trial was before a jury, and a verdict of guilty was returned July 29, 1980. The United States Court of Appeals for the Fifth Circuit returned a per curiam opinion July 2, 1980. The opinion is set forth herein in the appendix at page 1a and is reported at *649* F.2d *368*, (5th Cir. 1981).

JURISDICTIONAL STATEMENT

The petitioner was called to trial before a jury in the United States District Court for the Western District of Louisiana for allegedly violating 18 U.S.C. 1014 on July 28, 1980. The jury returned a verdict of guilty on July 29, 1980. On August 4, 1980, defendant filed a motion for and received an order granting an extension of time within which to file a motion for a new trial. On August 25, 1980, a motion for judgment of acquittal notwithstanding the verdict or in the alternative, for a new trial was filed. The motions were denied August 29, 1980 without hearing. The defendant was sentenced on September 29, 1980 to serve six months in a Federal

Penitentiary, however, the sentence was suspended and the petitioner placed on supervised probation for a period of three years.

An appeal was filed with the United States Court of Appeals for the Fifth Circuit on October 8, 1980. The conviction was affirmed by a judgment dated July 2, 1981. A motion for a rehearing was filed July 16, 1981 and subsequently denied on August 19, 1981. Jurisdiction over this matter is conferred on this Court by 28 U.S.C. § 1257 (3) (1976).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in part:

> No State shall . . . deprive any person of life, liberty or property, without due process of law . . .

STATEMENT OF THE CASE

This prosecution was instituted for an alleged violation of 18 U.S.C. 1014 by a Grand Jury indictment filed March 5, 1980 with the Clerk of the United States District Court for the Western District of Louisiana. The indictment alleged that the petitioner, Raymond C. Johnson caused a materially false financial statement to be transmitted to the Calcasieu Marine National Bank to influence it to make a loan in May of 1975. To establish jurisdiction of the United States District Court for the Western District of Louisiana, the Assistant United States Attorney offered into evidence a certificate from the Federal Deposit Insurance Corporation hanging in the lobby of the main branch of the Calcasieu Marine National Bank in Lake Charles, Louisiana. Over objection the certificate was received into evidence. There was no other competent legal evidence of insured (FDIC) status.

At the close of the government's case a motion for a judgment of acquittal was made, and denied by the trial court. The defendant presented no evidence, and at that time reurged

a motion for a judgment of acquittal (being, the close of all of the evidence). A motion for a judgment of acquittal was made by a post trial motion and again denied. All of the motions for a judgment of acquittal were based upon insufficiency of evidentiary proof of the deposits of the Calcasieu Marine National Bank being insured by the Federal Deposit Insurance Corporation.

The denial of the motions for judgments of acquittal were raised in the Court of Appeals, and the issue of sufficiency of evidence of insured status was before the Court. A copy of the Court's opinion affirming the conviction is set forth in the appendix herein.

DOES THE EROSION OF THE SUFFICIENCY OF EVIDENCE STANDARDS VIOLATE THE DUE PROCESS RIGHTS OF A DEFENDANT?

The primary question is can a certificate of insurance issued by the Federal Deposit Insurance Corporation be sufficient legal evidence to invoke a United States District Court's jurisdiction when the alleged criminal offense occurs at an uncertain date after the date of the certificate of a branch of the bank exhibiting the certificate in its lobby? This must be answered in light of the due process requirement of proof beyond a reasonable doubt. In answering this problematic question, we must first fully comprehend the steadfast adherence to the reasonable doubt standard. Mr. Justice Brennan, thoroughly and concisely reviewed and explained the reasoning and purpose of the reasonable doubt standard, in writing the Court's opinion in, *In Re Winship*, 397 U.S. 362, 905 Ct. 1068 (1970), stated:

> The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good

name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As we said in Speiser v. Randall, supra, 357 U.S., at 525-526, 78 S.Ct., at 1342: "There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value—as a criminal defendant his liberty—this margin of error is reduced as to him by the process of placing on the other party the burden of * * * persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt. Due process commands that no man shall lose his liberty unless the Government has borne the burden of * * * convincing the factfinder of his guilt." To this end, the reasonable-doubt standard is indispensable, for it "impresses on the trier of fact the necessity of reaching a subjective state of certitude the facts in issue." Dorsen & Rezneck, In Re Gault and the Future of Juvenile Law, 1 Family Law Quarterly, No. 4, pp. 1, 26 (1967).

Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.

Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. (99 S.Ct., at 1072, 1073)

There can be no mistake, the United States Constitution requires proof beyond a reasonable doubt of each and every element necessary to constitute the crime charged.

A review of the evidence will reveal that there is no evidence that the Calcasieu Marine National Bank was covered by Federal Deposit Insurance Corporation insurance in July of 1975. The certificate standing alone can only constitute proof beyond a reasonable doubt of Federal Deposit Insurance Corporation coverage for the year in which it is issued. Proof of payment of the necessary premiums and renewal documents would be necessary to prove Federal Deposit Insurance Corporation coverage for any additional years.

Generally the various circuits have required a greater degree of proof. A digest of cases demonstrating the kind and quantum of evidence ruled to be sufficient proof of insurance coverage by the Federal Deposit Insurance Corporation is found in *United States v. Maner*, 611 F.2d 107 (5th Cir. 1980). See footnote Number 1. There does appear to exist some disparity between the circuits as to sufficient proof.

How do you prove the essential element necessary to invoke a District Court's jurisdiction. One way would be to produce the bank officer or official responsible for Federal Deposit Insurance Corporation matters to produce the certificate of insurance, insurance premium notice, cancelled check showing payment, and competent testimony to reflect by use of these business records that coverage was in effect for the month the crime allegedly occurred. See *United States v. Clemons*, 532 F.2d 122 (8th Cir. 1976), and *United States v. Glover*, 394 F.Supp. 253 (E.D. Pa.), *affirmed without opinion*, 523 F.2d 1051 (3rd Cir. 1975). Another method of proof would make use of the same business records, plus records of the Federal Deposit Insurance Corporation supported by competent evidence that the Federal Deposit Insurance Corporation records reflect that the insured status has not been terminated. See *Glover*, supra. Also available as a method of proof would be use of certified copies of business records or other official records. See Business Records Act, 28 U.S.C.A. §§1732, 1733, F. R. Evid. 803(6), 803(8), 902 and legislative history of the

Federal Rules of Evidence in (1974) U.S. Code Cong. & Admin. New, p. 7051.

Because of the relative ease of producing more than adequate legal proof, then there should be no erosion of the burden of proof required for proof of a jurisdictional element of any charged crime. The holding and the spirit of the decision of *In Re Winship*, supra, demands a higher standard, and clearly the presumption of innocence—that bedrock "axiomatic and elementary" principle whose "enforcement lies at the foundation of the administration of our criminal law" stands out to require a halt to the erosion of proof necessary to sustain a criminal conviction. See *Coffen v. United States*, 156 U.S. 432, 15 S.Ct. 394, 39 L.Ed. 481 (1895), 156 U.S. at 453, 15 S.Ct. at 403.

The tacit acceptance of proof not up to the "minimum" standards the Fifth Circuit had previously maintained violates the due process rights of the petitioner by allowing the affirmation of a conviction upon proof not beyond a reasonable doubt.

CONCLUSION

The full burden rests on the government in all criminal prosecutions to prove every essential element beyond a reasonable doubt. *Mulaney v. Wilbur*, 421 U.S. 684, 696-702, 95 S.Ct. 1881, 1888-1891 (1975). "The verdict in a criminal case is sustained only when there is relevant evidence from which the jury could properly find or infer, beyond a reasonable doubt, 'that the accused is guilty'." *American Tobacco Company v. U.S.*, 328 U.S. 781, 787, 66 S.Ct. 1125, 1128 (1946). The *Winship* holding reflects the "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." Id, at 372 (Harlan, J., concurring).

When the sparseness of the proof presented in this case is measured up against the fundamental due process principles which form the basis for our legal system, it becomes apparent they fall far short of the standard required. The petitioner

respectfully requests that this Court address the question of the degree of legal proof necessary to meet the due process requirements for the proof of insured status of a banking institution under the Federal Deposit Insurance Corporation.

Although proper trial preparation should alleviate the error of prosecutors in producing sparse proof of Federal Deposit Insurance Corporation insurance coverage, the increasing variance in standards produces ever increasing confusion in lower courts and can be readily remedied by the addressing of legal issue by this Court, and protect accused from potential and imminent due process violations.

Respectfully submitted,

KENNETH MICHAEL WRIGHT
203 West Clarence Street
Lake Charles, Louisiana 70601

Attorney for Petitioner

APPENDIX

United States Court of Appeals
For the Fifth Circuit

No. 80-3821

D. C. Docket No. CR-80-20010-01

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

RAYMOND C. JOHNSON,
Defendant-Appellant.

Appeal from the United States District Court for the Western District of Louisiana

Before BROWN and GARZA, Circuit Judges, and PETER H. BEER*, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the conviction of the said District Court in this cause be, and the same is hereby, affirmed.

July 2, 1981

Issued as Mandate: September 4, 1981

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* District Judge of the Eastern District of Louisiana, sitting by designation.

UNITED STATES of America,
Plaintiff-Appellee,

v.

Raymond C. JOHNSON,
Defendant-Appellant.

No. 80-3821.

United States Court of Appeals,
Fifth Circuit.
Unit A

July 2, 1981.

Appeal from the United States District Court for the Western District of Louisiana.

Before BROWN and GARZA, Circuit Judges, and PETER H. BEER*, District Judge.

PER CURIAM:

The proof of the F.D.I.C. insured status of the bank was sparse as, unfortunately, it too often is. *See United States v. Maner*, 611 F.2d 107, (5th Cir. 1980).

Nevertheless it was sufficient to sustain the guilty verdict and conviction. The other asserted errors relating to the admissibility or adequacy of the proof to show violation of 18 U.S.C.A. §1014 are without merit.

AFFIRMED.

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* District Judge of the Eastern District of Louisiana, sitting by designation.